

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN E. BARNHOUSE,  
Plaintiff,

v.

No. C09-5154 RJB/KLS

ELDON VAIL, RONALD D. FRAKER,  
JAMES RENO, MICHAEL  
CHRISTENSEN, BRIAN ZAVODNY,  
STEVE RAMSEY, ALVA MOSELEY,  
JAMES McLEAN, MALCOM STARK,  
HENDRICK, and DARREN  
HEAWARD,

Defendants.

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 136), and the remaining record, does hereby find and **ORDER**:

- (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 136).
- (2) Defendants' Motion for Summary Judgment (Dkt. 130) is **GRANTED IN PART AND DENIED IN PART** as follows: The motion is **DENIED** as to Plaintiff's claims against James McLean and Malcolm Stark for excessive force under the Eighth Amendment and for retaliation under the First Amendment, and these claims may proceed; the motion is **GRANTED** in all other respects, and all other claims against all defendants are **DISMISSED WITH PREJUDICE**.
- (3) In their motion for summary judgment, defendants requested that all claims against all defendants be dismissed. Plaintiff did not respond to defendants' motion for summary judgment, even though he was granted an extension of time to do so. Because plaintiff did not respond to the motion for summary judgment, pursuant W.D. Wash. Local Civil Rule 7(b)(2), the court may deem the failure to respond to be an admission that the motion has merit. It is unclear whether plaintiff intends to proceed with the remaining claims in this case against Mr. McLean and Mr. Stark. Not later than May 20, 2011, plaintiff is **ORDERED** to

1 inform the court whether he intends to proceed with the remaining claims in this  
2 case. If plaintiff fails to respond to this order by May 20, 2011, the court may  
dismiss the remaining claims against Mr. McLean and Mr. Stark with prejudice.

- 3 (4) The Clerk is directed to send copies of this Order to plaintiff, to counsel for  
4 defendants, and to the Hon. Karen L. Strombom.

5 **DATED** this 29th day of April, 2011.

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9 ROBERT J. BRYAN  
10 United States District Judge  
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